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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of)
)
Provision of Directory Listing)
Information under the Telecommunications)
Act of 1934, As Amended)

CC Docket No. 99-273

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**OPPOSITION OF LSSi CORP. TO
PETITIONS FOR RECONSIDERATION**

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SUMMARY

In the *First Report and Order*, the Federal Communications Commission (“FCC” or “Commission”) accurately declares that only through the unfettered dissemination of directory assistance (“DA”) can a competitive market truly flourish. This decision was a powerful blow to the ILECs’ historical bottleneck of the DA market.

Despite a record soundly based on the public interest and competitive market concerns, the ILECs’ Petitions for Reconsideration are based on the same, tired, self-serving arguments the Commission has properly rejected throughout this proceeding. Indeed, the ILECs latch-on to consumer privacy concerns as the *cause celeb* behind their request for a reconsideration. Yet, the concerns identified in their Petitions have been adequately addressed by the Commission.

In the *Order*, the Commission recognized that both the creation and implementation of restrictions upon DA use is within the purview of state commissions, not the ILECs. The Commission also concluded in the *Order* that to permit the ILECs the power to determine usage restrictions, such as the ILECs request, would devastate incentives to create innovative applications for DA information. Instead, in this age of Internet technology, market decisions should be based on competition, not monopoly control. For these reasons, the Commission should reject the ILECs’ Petitions and maintain a pro-competitive approach to the directory assistance market.

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LSSi Corp. (“LSSi”, formerly Listing Services Solutions, Inc.), by its attorneys, respectfully submits these comments, pursuant to Section 1.429(f) of the Federal Communications Commission (“FCC” or “Commission”) rules,¹ in opposition to the Petitions for Reconsideration of the *First Report and Order*² in the above-captioned docket.³

INTRODUCTION

The incumbent local exchange carriers’ (“ILECs”) Petitions ask the Commission to revisit the decision to abolish ILEC-imposed usage restrictions on directory assistance (“DA”)

¹ 47 C.F.R. § 1.429(f).

² *In the Matter of Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket No. 99-273, First Report and Order, FCC 01-27 (rel. Jan. 23, 2001)(“*First Report and Order*”).

³ *In the Matter of Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket No. 99-273, Petition for Reconsideration of SBC Communications Inc. and BellSouth Corporation, FCC 01-27 (March 23, 2001) (“SBC and BellSouth Petition”); *In the Matter of Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket No. 99-273, Petition for Reconsideration of Qwest Corporation, FCC 01-27 (March 23, 2001) (“Qwest Petition”).

data.⁴ A Petition for Reconsideration must rely “on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters” or else “on facts unknown to Petitioner until after his last opportunity to present such matters.”⁵ Petitioners have made no such showing.

The ILECs fail to proffer a single shred of new information to support their plea. As such, there is no basis for the Commission to reconsider its well-reasoned decision. To the contrary, the Commission’s *Order* reflects an appropriate balance between protecting end user privacy and furthering the procompetitive policy goals set forth by Congress and this Commission. The well-worn arguments raised by the ILECs were not only fully vetted on the record below, but soundly rejected by the Commission. Accordingly, the ILEC Petitions should be denied.

The Commission appropriately encourages innovation in directory assistance applications in the *First Report and Order* by dismantling the restrictive hold ILECs have historically had over DA listings.⁶ In their Petitions, in an effort to stall competitive uses of directory assistance, such as applications via the Internet, the ILECs urge the Commission to re-litigate the same issues without any new evidence. The discriminatory impact of such an improper reading of the *First Report and Order* would result in a significant step backwards in the evolution of the competitive directory assistance market.

For instance, SBC and BellSouth mischaracterize the Commission’s prohibition upon all ILEC-imposed usage restrictions in the *First Report and Order* to apply *only to agents* of carriers purchasing the directory assistance, as opposed to all purchasers of directory assistance—carriers

⁴ SBC and BellSouth Petition at 1; Qwest Petition at 2.

⁵ 47 C.F.R. § 1.106(b)(2).

⁶ *First Report and Order* ¶ 43.

and their agents alike.⁷ Not only does this reading proliferate the ILECs' anticompetitive behavior, it contradicts the explicit language of the *Order* removing all ILEC-imposed restrictions from "*all DA providers*, including competing DA providers."⁸ Indeed, the ILECs' Petitions call for nothing short of an entirely new proceeding based on facts that have already been determined in the present *Order*. LSSi, therefore, urges the Commission to deny the ILECs' Petitions for Reconsideration.

I. THE FCC'S DECISION APPROPRIATELY REMOVES ILEC-IMPOSED RESTRICTIONS UPON COMPETITIVE DA PROVIDERS' USE OF DIRECTORY ASSISTANCE.

Despite the ILECs' strident objections,⁹ the *First Report and Order* removes usage restrictions on directory assistance information by the ILECs upon competitive DA providers.¹⁰ Based on a fully developed record on these issues, the Commission rejects the ILECs' contention that "a competing DA provider may not use the DA database for purposes other than providing directory assistance."¹¹ Yet, while the Commission soundly denies incumbents the ability to restrict the use of DA information by their competitors, it acknowledges the right of state regulators to fashion usage restrictions necessary to protect end user privacy.¹² The Petitioners raise no new arguments to warrant Commission action to disturb these conclusions, therefore the Petitions should therefore be denied.

⁷ SBC and BellSouth Petition at 2.

⁸ *First Report and Order* ¶ 29, (emphasis added).

⁹ Qwest admits in its Petition that "the Commission rendered its decision over the recommendation of various LECs." Qwest Petition at 1.

¹⁰ *First Report and Order* ¶ 29.

¹¹ *Id.*, citing Bell Atlantic Reply Comments at 4-5; Sprint Reply Comments at 2; US West Comments at 5-6; *see also* SBC Petition at 2 (expressing concern about "preserving the commercial viability of the DA listings"); SBC Reply Comments at 14 (urging the FCC to "give meaning to the statutory provision by limiting the permitted use of directory assistance information"); Bell Atlantic Comments at 6 ("If the LEC *chooses* to license another carrier to use this information for purposes other than directory assistance, it may do so"); CBT Comments at 4 (Usage restrictions are "necessary to protect the *company's* interest in its listing information").

A. The Record Established that ILECs Have the Incentive and Ability to Act Anticompetitively in the Provision of Directory Assistance Information.

The ILEC Petitions, not surprisingly, ignore the strong policy basis underlying the Commission's decision to prohibit ILEC restrictions on the use of DA information. Specifically, the Commission concluded that the record demonstrated that ILECs have both the incentive and ability to use such restrictions to impede the development of competitive DA offerings. As the Commission notes, "[b]ecause incumbent LECs derive their local directory assistance database through their service order processes, they continue to maintain a near total control over the vast majority of local directory listings that form a necessary input to the competitive provision of directory assistance."¹³ The ILECs have every incentive to impose unreasonable usage restrictions on DA information to forestall inroads into their monopoly markets and to retain as much market share as possible.¹⁴ Consequently, the Commission declares that Section 251(b)(3) does not provide for any limitations on any DA providers' use of directory assistance, with the exception of restrictions established by the states.¹⁵

Instead, the Petitioners reiterate the arguments previously raised in their comments. Tellingly, other than the incumbents seeking to protect their monopoly control, the record was remarkably silent on the "serious privacy concerns" that form the basis of the call for reconsideration.¹⁶ Consumer groups, state commissions or other interested parties do not share

¹² Indeed, the Commission specifically referenced state-imposed usage restrictions on "prohibiting the sale of customer information to telemarketers." *First Report and Order* ¶ 29.

¹³ *First Report and Order* ¶ 3.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ SBC and BellSouth Petition at 2; Qwest Petition at 2.

the self-serving concerns voiced by the ILECs.¹⁷ Furthermore, Petitioners fail to mention that these very concerns are specifically dealt with in the *Order*.¹⁸

Petitioners contend that the Commission's *First Report and Order* fails to address the concerns raised in the record that some directory assistance information should be kept from certain marketing purposes.¹⁹ Qwest argues for reconsideration on the basis that "[t]he Commission's recent decision seems at odds with its usual regard for customer's privacy expectations, including its express articulation of customers' reactions to unsolicited telemarketing."²⁰ SBC and BellSouth voice concern that the decision could allow DA providers to make "use of the listings for sales solicitation and telemarketing."²¹ These assertions disregard the Commission's explicit recognition of the states' ability to act as necessary to protect the public interest in privacy from possible misuses of information for certain marketing purposes.²²

The public interest concerns—cited by the ILECs as the basis for their anticompetitive usage restrictions on DA—can and should be addressed by regulators, not incumbents.²³ Thus, the *First Report and Order* correctly relies upon the state regulators, not the incumbents, to determine whether the public interest requires DA providers' use of directory assistance to be

¹⁷ Commenters in this proceeding included: Association of Directory Publishers (ADP), Bell Atlantic, Cincinnati Bell Telephone Company (CBT), DirectoryNET, Excell Agent Services (Excell), GTE Service Corporation (GTE), INFONXX, LSSi, MCI Worldcom, Metro One Telecommunications (Metro One), NET DQ, Sprint Corporation (Sprint), Telegate AG (Telegate), Teltrust, Time Warner Telecom (Time Warner), United States Telephone Association (USTA), U S WEST Communications (U S WEST), Yellow Pages Publishers Association (YPPA).

¹⁸ *First Report and Order* ¶¶ 28, 29.

¹⁹ SBC and BellSouth Petition at 1; Qwest Petition at 2.

²⁰ Qwest Petition at 2.

²¹ SBC and BellSouth Petition at 2.

²² *First Report and Order* ¶ 29.

²³ See LSSi Comments at 14.

constrained.²⁴ As a result, the Commission's *First Report and Order* appropriately removes all ILEC-imposed usage restrictions.²⁵

B. The Commission Rightly Concluded that Privacy Concerns Be Addressed through State Regulations.

The Commission balances the public interest over privacy concerns with the need for competition in the directory assistance marketplace. To strike the necessary balance, the Commission reaffirms the role of state commissions in implementing the policy goals of a competitive DA market.²⁶ Specifically, the Commission does “not preclude states from continuing to limit how LECs or competing DA providers can use accessed directory information.”²⁷ The Commission's reliance on state regulations is not misplaced as states do—and will continue to—provide necessary protection of consumer information.

Many states have policies regarding the usage of directory assistance for all DA providers, not just competitive DA providers. For example, state commissions in Illinois and Ohio place limitations on the usage of directory assistance information due to concerns about the dissemination of non-published numbers.²⁸ In New York, the Commission's application of its PRIVACY PRINCIPLES²⁹ to directory database information requires all LECs to notify customers of

²⁴ *First Report and Order* ¶ 29.

²⁵ *First Report and Order* ¶ 29.

²⁶ See *First Report and Order* ¶ 29; *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98, FCC 96-333, 11 FCC Rcd 19, 392 *et seq.* (rel. Aug. 1996) (“*Second Report and Order*”) ¶ 141.

²⁷ *First Report and Order* ¶ 29.

²⁸ ILL ADMIN CODE tit. 83, 735.180(h)(2000); OHIO ADMIN CODE § 4901:1-5-10(B)(2000).

²⁹ See *Statement of Policy on Privacy in Telecommunications*, Case 90-C-0075 (March 22, 1991); *Modification and Clarification of Policy on Privacy in Telecommunications*, Case 90-C-0075 (September 20, 1991) at 3-4. (The Commission's privacy principle requires recognition by carriers of privacy concerns, education of customers of privacy concerns and informed consent by customers to use subscriber-specific information for non-billing purposes).

the privacy implications of their DA information.³⁰ The California Public Utilities Commission concluded that “a CLEC may not refuse to consent to release of its listings from the ILEC’s DA database to third party DA providers”, unless “the customer has requested a private or non-published listing.”³¹ The Texas Public Utility Commission found that the incumbent could not implement usage restrictions on directory assistance³², though customers could request that their DA information remain unlisted.³³ Thus, states can safeguard consumer privacy; incumbents need not.

C. Petitioners Wrongly Assert that the Usage Restriction Prohibition Applies Only to DA Competitors in an Agency Relationship.

In a misguided effort to read some limits into the flat prohibition on ILEC-imposed usage restrictions, SBC and BellSouth mischaracterize the Commission’s prohibition as applying *only to agents* of carriers purchasing the directory assistance.³⁴ This strained construction is completely at odds with the language, intent and goals of the *Order*.

The language of the Commission’s *First Report and Order* prohibiting ILEC-imposed usage restrictions applies equally to all purchasers of directory assistance—carriers and their agents alike. The Commission expressly “disagree[s] with commenters such as Bell Atlantic that maintain *a competing DA provider* may not use the DA database for purposes other than

³⁰ New York State Public Service Commission, *Proceeding on Motion of the Commission to Examine Issues Relating to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market*, Case 94-C-0095, Order Resolving Petitions for Rehearing and Clarification of July 22, 1998 Order Regarding Directory Database Issues and Directing Refiling of Tariffs (Jan. 7, 1999) at 15.

³¹ *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service*, Rulemaking 95-04-043, *Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service*, Investigation 95-04-044, Decision 00-10-026, California Public Utilities Commission Order (October 5, 2000) at 7.

³² Texas Public Utilities Commission, Order, 194 P.U.R. 4th 307 (April 8, 1999) at 2.

³³ 16 TEXAS ADMIN CODE § 26.128 (d)(1).

³⁴ SBC and BellSouth Petition at 2-3.

providing directory assistance.”³⁵ Accordingly, the Commission concluded that the prohibition on ILEC-imposed usage restrictions “*applies to all DA providers, including competing DA providers.*”³⁶ Competing DA providers include both carriers and agents.³⁷ Consequently, the *Order* plainly establishes a blanket prohibition on ILEC-imposed usage restrictions for competing DA providers. The Commission should dispel the notion that the ban on ILEC-imposed usage restrictions is in any way limited to agents alone and halt this brazen ILEC attempt to exercise their bottleneck control on competing DA providers.

II. THE FIRST REPORT AND ORDER PROPERLY SUPPORTS INNOVATIVE PRACTICES EMERGING IN DIRECTORY ASSISTANCE.

Adapting services through innovation is essential in any marketplace to satisfy the evolving consumer demand and to address changing market dynamics. A monopolist’s lack of incentive to offer innovative services is a primary reason for introducing competition into a marketplace. Only a few years ago, the Commission began to implement the directives of the 1996 Act by defining “nondiscriminatory access to directory assistance.”³⁸ The progression of the directory assistance market during those years, as summarized in the record,³⁹ reflects burgeoning innovation in directory assistance services.⁴⁰

Innovative directory assistance services—either those currently offered or those that competitors intend to offer—must not fall prey to the predatory behavior of the incumbents.

³⁵ *First Report and Order* ¶ 29 (*emphasis added*).

³⁶ *First Report and Order* ¶ 29 (*emphasis added*).

³⁷ *First Report and Order* ¶ 27-28.

³⁸ *Second Report and Order* ¶ 14.

³⁹ LSSi Comments at 13, 18; Excell Agent Services, L.L.C. Comments at 16 INFONXX, Inc. Comments at 2, 4; Teltrust, Inc. Comments at 8.

⁴⁰ See LSSi Comments at 29 *citing* NPRM ¶ 172 (“limiting DA providers’ use of listings would be inconsistent with the Act in that it would place competitors at a disadvantage to LECs that can use their listings for a variety of purposes (and increase the economies of scale to cover the costs of the listings) and would undermine the Act’s goal of allowing competitors to develop their own creative offerings”).

Allowing incumbents to assert their control over directory assistance information by restricting its use by competitors—while having unencumbered use of the same information—will only serve to limit the innovation available in the directory assistance marketplace. LSSi, therefore, applauds the pro-competitive actions taken in the *First Report and Order*. To preserve this blossoming competitive market, the Commission must deny the ILECs’ Petitions to remove the prohibition against ILEC-imposed usage restrictions.

A. The Record Recognizes the Anticompetitive Effect of ILEC-Imposed Usage Restrictions Upon Innovative DA Applications.

The Commission based its decision in the *First Report and Order* on a record replete with strong policy reasons for eliminating ILEC control over usage of directory assistance information. LSSi, among others, argued that “just as the behind-the-scenes differences in treatment could damage DA providers ability to offer their customers quality DA services, so too can those differences damage DA providers’ ability to offer a full array of services to their customers.”⁴¹ The concern of discriminatory treatment lies at the heart of Commission’s determination to eliminate usage restrictions.⁴²

Commenters also highlighted an array of competitive, innovative DA applications, “particularly those enhanced with consumer-friendly features” that could be inhibited by ILEC-imposed usage restrictions.⁴³ For instance, LSSi illustrated that “DA providers are now packaging their services with information about movie listings, locations and types of restaurants, and then completing calls to those destinations. The evolution of these services has clearly demonstrated that there is a market niche for telecommunications providers that only

⁴¹ LSSi Comments at 26; *see also* Metro One Comments at 23; Telegate AG Reply Comments at 1; Excell Agent Services Reply Comments at 9.

⁴² *First Report and Order* ¶ 10.

offer DA and call completion services.”⁴⁴ Other competitive DA providers similarly described offering “a package of enhanced service options, including label branding, multilingual directory assistance, automatic return to directory assistance by pressing the “*” key, and international directory assistance.”⁴⁵

Competitive DA providers currently offer, and likely will continue to institute, new directory assistance applications. To prosper in the directory assistance marketplace, competitive DA providers need the latitude required by Section 251(b)(3) to provide the types of applications demanded by consumers. As LSSi commented, “while consumer privacy is a critical public policy issue, particularly in the Internet age, LECs should not be the arbiters or enforcers of consumer privacy.”⁴⁶ Thus, the record supports the reasoned conclusions reached by the Commission in the *First Report and Order* that states are in the best position to determine whether public interest privacy concerns require restrictions on the use of directory assistance.

B. The *First Report and Order* Supports Innovative Internet Directory Assistance Applications.

The Commission has consistently encouraged competitive carriers to develop enhanced applications for the DA listing information to supplement current directory assistance services, including Internet applications.⁴⁷ Of the many enhanced applications for directory assistance

⁴³ LSSi Comments at 18; *see also* LSSi Comments at 23; Excell Agent Services Reply Comments at 9; INFONXX, Inc. Comments at 3, 19; Metro One Comments at 23; Telegate AG Reply Comments at 1.

⁴⁴ LSSi Comments at 13.

⁴⁵ Teltrust, Inc. Comments at 8; *see also* Excell Agent Services Reply Comments at 9; INFONXX, Inc. Comments at 3, 19; Metro One Comments at 23; Telegate AG Reply Comments at 1.

⁴⁶ LSSi Comments at 26.

⁴⁷ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket Nos. 96-115, 96-98, 99-273, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, 14 FCC Rcd 15550 (1999) (“*SLI/DA Order and Notice*”) ¶ 152; *First Report and Order* ¶¶ 3, 10.

described in this proceeding,⁴⁸ the Internet provides a relatively new medium for offering innovative applications of directory assistance information.

Throughout this proceeding, parties emphasized the important role of the Internet in providing consumers with innovative directory assistance services. For example, in its Comments, United States Telephone Association (“USTA”) declared that “the Internet, as a transactional medium, has yet to reach its full flower.”⁴⁹ LSSi similarly noted that “as the Commission has recognized, there is a fundamental change in the way directory services are offered today, particularly via the Internet.”⁵⁰ Even Petitioner Qwest offers directory assistance over the Internet.⁵¹ Thus, the Commission observed that “the growth of the Internet has opened the door for a growing number of Internet services.”⁵² Based on the numerous record examples of the benefits of providing innovative directory assistance services, including via the Internet, the Commission properly rejected the ILECs’ attempts to impose limitations of competitors’ usage of directory assistance information.⁵³

C. The ILEC Petitions Propose Rules that Represent a Significant Step Backward and Would Enable ILECs to Persist in Discriminatory Directory Assistance Practices.

Not only would removing the prohibition against ILEC-imposed usage restrictions be inconsistent with the record, it would detrimentally impact the advancements made in the

⁴⁸ LSSi Comments at 13, 18; Excell Agent Services, L.L.C. Comments at 16 INFONXX, Inc. Comments at 2, 4; Teltrust, Inc. Comments at 8.

⁴⁹ USTA Comments at 3.

⁵⁰ LSSi Comments at 7; LSSi Comments at 21 (“The Internet is the most interactive medium to date, and it is becoming more so, not less”); LSSi Comments at 32 (“The nature of directory assistance services is changing and the Internet could become the primary medium for relaying directory information”).

⁵¹ Qwest Petition at 12.

⁵² *First Report and Order* ¶ 41.

⁵³ *First Report and Order* ¶ 29 citing Bell Atlantic Reply Comments at 4-5; Sprint Reply Comments at 2; US West Comments at 5-6; *see also* LSSi Reply Comments at 17-18 (“it is important that the Commission not allow LECs to restrict providers’ ability to offer competitive and innovative services by imposing Internet specific use restrictions”).

competitive use of directory assistance information. Directory assistance providers, incumbents and competitors alike, constantly test and evaluate DA applications.⁵⁴ Indeed, ILECs' directory assistance databases originated as a new, innovative application of information billing databases.⁵⁵

ILECs, however, do not live by the same restrictions they impose on their competitors, including Internet use restrictions. Thus, for example Qwest's predecessor US West restricted DA providers use of directory assistance data for Internet applications.⁵⁶ Yet, Petitioner Qwest takes advantage of the Internet to provide directory assistance services.⁵⁷

The continued ILEC discretion to use listing information for a variety of directory assistance applications highlights the discriminatory impact of the ILEC-imposed usage restrictions on competitive DA providers. Moreover, the restrictions are not necessary to protect consumer privacy, because as the Commission recognized, each carrier is responsible for complying with nondiscriminatory state-imposed limitations. Overall, the Commission's prohibition on ILEC-imposed usage restrictions furthers the goal of ensuring competitive DA providers nondiscriminatory access to directory assistance in a manner that will promote competition and innovation consistent with Section 251(b)(3).⁵⁸

⁵⁴ LSSi Comments at 13, 18; Excell Agent Services, L.L.C. Comments at 16; INFONXX, Inc. Comments at 2, 4; Teltrust, Inc. Comments at 8.

⁵⁵ See *First Report and Order* ¶ 3.

⁵⁶ LSSi Reply Comments at 22 ("As evidenced by US West's contract with LSSi precluding Internet use, LECs can and do intend to preclude competitors from offering Internet DA services"); see also SBC and BellSouth Petition at 6; CBT Comments at 5-6; Bell Atlantic Comments at 16.

⁵⁷ Qwest Petition at 12; US West Comments at 3 (even though "US West also provides a tariffed Electronic Directory Assistance . . . offering").


⁵⁸ *First Report and Order* ¶ 29 quoting LSSi Comments at 3-4 ("it is inconsistent with the nondiscriminatory requirements of the Act to allow LECs to use this information in anyway they choose, while limiting competing DA providers to finite uses").

CONCLUSION

For the reasons set forth herein, the Commission should deny the ILEC Petitions for Reconsideration.

Respectfully submitted,

LSSi CORP.

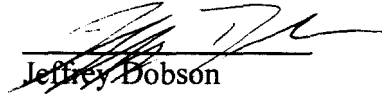
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Dated: April 30, 2001

CERTIFICATE OF SERVICE

I, Jeffrey Dobson, do hereby certify on this 30th day of April, 2001, that I have served a copy of the foregoing document via * messenger and U.S. Mail, postage pre-paid, to the following:


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